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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 CURTIS E. MILLER,) Civil No.08-cv-2428 AJB (PCL)
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14 Plaintiff,) ORDER OVERRULING OBJECTIONS;
15 v.) ADOPTING REPORT AND
16 T. CATLETT,) RECOMMENDATION AND GRANTING
17 Correctional Officer, et. al,) DEFENDANTS' MOTION FOR
18) SUMMARY JUDGMENT
19) [Doc. Nos. 95, 96 and 101]
20 Defendants.)
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18 On October 3, 2011, Judge Lewis filed a Report and Recommendation (hereinafter "R&R"),
19 [Doc. No. 95], containing findings and conclusions, upon which he bases his recommendation that the
20 Court grant in part and deny in part Defendants' motion for summary judgment, [Doc. No. 85].
21 Defendants filed a timely objection, [Doc. No. 96], to a portion of the R&R, but move this Court to
22 affirm Judge Lewis' decision and enter judgment in favor of Defendants and against Plaintiff. The
23 Plaintiff also filed a timely objection, [Doc. No. 101]. The Court has considered the R&R and the
24 objections filed by the parties and (1) overrules the objections filed by the parties;
25 (2) adopts Judge Lewis' recommendations, (3) grants summary judgment terminating this case, and (4)
26 issues a certificate of appealability.
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1 For the reasons set forth below, the Court OVERRULES all objections made by Defendants and
2 Plaintiff, and ADOPTS the Report and Recommendation in its entirety and GRANTS Defendants'
3 Motion for Summary Judgment.

4 **Background**

5 Plaintiff's narrative begins on the morning of May 30, 2007 after a black prisoner assaulted
6 Defendant A. Amat, a correctional officer, in housing unit B4 at Calipatria State Prison resulting in
7 facility B being placed on lockdown. [Doc. No. 30, at 3]. Plaintiff states that on July 3, 2007, the
8 warden issued a program status report that allegedly restored some privileges to black prisoners,
9 including Plaintiff, in facility B but that the black prisoners allegedly were not accorded those privileges
10 in reality. *Id.* Plaintiff alleges that correctional officers attempted to provoke black prisoners into
11 altercations in an effort "to have restrictions placed back on said prisoners." *Id.* Plaintiff states that he
12 filed a group administrative appeal alleging that the warden "and/or his subordinates were retaliating
13 against black prisoners in B4 for the assault on Defendant Amat." *Id.* at 4.

14 Plaintiff then alleges that Defendant Amat approached Plaintiff's cell on September 11, 2007
15 with a wrapped object that Defendant Amat accused Plaintiff and his cell mate of having. *Id.* Plaintiff
16 states that Defendant Amat returned to Plaintiff's cell with Defendant T. Catlett, who ordered that
17 Plaintiff and his cell mate be placed in restraints and removed from their cell and placed in administra-
18 tive segregation. [Doc. No. 30, at 4]. Plaintiff states that Defendants Catlett and Amat both filed crime
19 incident reports: Defendant Amat reported that he found a wrapped object that turned out to be a
20 weapon in front of Plaintiff's cell, while Defendant Catlett reported that he found the weapon mixed
21 with laundry from Plaintiff's cell. *Id.* Plaintiff claims that both reports were falsified. *Id.* Plaintiff also
22 claims that Defendants Catlett and Amat falsely endorsed a rule violation report containing a statement
23 that the weapon was found in laundry that came out of Plaintiff's cell. *Id.* Having received the report
24 on September 23, 2007, Plaintiff states that he was found not guilty of the offense by the disciplinary
25 hearing officer on November 20, 2007 and that he was released from administrative segregation on
26 November 27, 2007. *Id.* at 4-5. Shortly thereafter, Plaintiff filed a grievance against Defendant Catlett.
27 [Doc. No. 30, at 5]. Plaintiff feared filing a grievance against Defendant Amat because he was still
28 working at facility B, unlike Defendant Catlett. *Id.* On January 6, 2009, Plaintiff filed a grievance

1 against Defendant Amat because Plaintiff believed that Amat had been transferred to another facility.
 2 *Id.* On April 10, 2008, Plaintiff was advised that the district attorney declined to prosecute this matter.
 3 *Id.*

4 Under this set of facts, Plaintiff claims that Defendants Catlett and Amat retaliated against him
 5 for exercising his right to file grievances at Calipatria State Prison. *Id.* at 5. Plaintiff contends that he
 6 “suffered severe mental stress, depression, loss of appetite [sic], loss of sleep, loss of association, and
 7 loss of enjoyment of life.” [Doc. No. 30, at 5.]

8 Discussion

9 Under 28 U.S.C. § 636(b)(1)(C), in reviewing the magistrate judge's report and recommendation,
 10 the district court “shall make a de novo determination of those portions of the report ... to which
 11 objection is made,” and “may accept, reject, or modify, in whole or in part, the findings or recommenda-
 12 tions made by the magistrate judge.”

13 Defendants filed objections to the R&R and requested the Court review whether Defendants are
 14 entitled to qualified immunity for the actions described in this case. Plaintiff also objects to portions of
 15 the R&R and requested the Court review whether: (1) Plaintiff presented a genuine dispute of material
 16 fact on the causation element of the retaliation claims; and (2) Plaintiff provided a genuine dispute of
 17 material fact in regards to the legitimate correctional goal element of the retaliation claim.

18 ***1. Whether Defendants Are Entitled to Qualified Immunity for the Actions Described***

19 Defendants argue that the R&R misapplied the two-prong test established by the Supreme Court
 20 in *Saucier v. Katz*, 533 U.S. 194 (2001) for determining whether qualified immunity applies. [Doc. No.
 21 30, at 5.] To find qualified immunity, the Court must first consider whether the facts alleged, taken in
 22 the light most favorable to Plaintiff, show that the government officials’ conduct violated a constitu-
 23 tional right. *Id.* at 201. Second, “if a violation could be made out on a favorable view of the parties’
 24 submissions,” the Court must determine whether the constitutional right that was potentially violated
 25 was clearly established in the specific context of the case at hand. *Id.* Defendants object to the R&R on
 26 three grounds. First, Defendants maintain that because the Magistrate Judge concluded there is no
 27 evidence of a constitutional violation, “the inquiry should stop there, and qualified immunity need not
 28 be reached.” (citing *Saucier*, 533 U.S. at 200). [Doc. No. 96, at 3.] Second, Defendants object that it

1 was not appropriate for the court to consider the evidence in the case in connection with the substantive
2 claim of a constitutional violation, but to not consider the same evidence in connection with the
3 qualified immunity defense. *Id.* Third, Defendants argue that in determining whether the constitutional
4 violation alleged was clearly established, the court considered the retaliation claim in the abstract, rather
5 than considering the fact specific context in which Defendants acted in this case. *Id.* The Court is not
6 persuaded by Defendants' argument.

7 The Court reviewed the record and finds the magistrate judge appropriately determined that
8 Defendants are not entitled to qualified immunity. Defendants argue that qualified immunity should not
9 have been reached because the magistrate judge already found there to be no evidence of a constitutional
10 violation. *Id.* The test for qualified immunity, however, is even less stringent than the test the
11 magistrate judge used to find summary judgment on the substantive claim. Whereas qualified immunity
12 considers the alleged facts on its face, a motion for summary judgment under Fed. R. Civ. P. 56
13 addresses the sufficiency of the evidence, or of the law, to support the plaintiff's claims. *Warren v. City*
14 *of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995). Because of the differing legal standards, different
15 conclusions could therefore be reached on the two separate legal issues. Thus, the magistrate judge did
16 not err in deciding qualified immunity after reaching a conclusion for summary judgment on the
17 substantive claim.

18 Defendants also argue that the magistrate judge inappropriately dismissed the case's evidence, or
19 lack thereof, in connection with the qualified immunity defense. [Doc. No. 96, at 3.] Again, the first
20 inquiry of the qualified immunity test addresses whether a violation could be made out on a favorable
21 view of the parties' submissions. *Saucier*, 533 U.S. at 201. The test does not, as Defendants suggest,
22 address the sufficiency of the evidence to support whether a violation actually occurred. This Court
23 therefore shares the magistrate judge's finding that the alleged facts, viewed in light most favorable to
24 Plaintiff, potentially show a violation of Plaintiff's constitutional right to file grievances. [Doc. No. 95,
25 at 12.] Here, Plaintiff alleges that Defendants drafted and approved a false rules violation report against
26 him in order to retaliate against Plaintiff for filing an administrative group appeal. [Doc. No. 30, at 5.]
27 Notwithstanding sufficient evidence to prove Plaintiff's claim, a constitutional right would have been
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1 violated were the allegations established. The magistrate judge thus appropriately decided the qualified
2 immunity defense based only on the alleged facts viewed most favorably to Plaintiff.

3 Defendants similarly object to the R&R by claiming the retaliation claim was considered in the
4 abstract, rather than the fact-specific context in which Defendants acted in this case. [Doc. No. 96, at 3-
5 4.] Defendants again confuse the qualified immunity test with one that considers the facts as illuminated
6 by the *evidence presented* as opposed to only considering the facts in light most favorable to Plaintiff.
7 *Id.* at 4. The R&R did not consider the retaliation claim in the abstract. Instead, the magistrate judge
8 based the qualified immunity finding on the alleged facts as if they were established. [Doc. No. 95, at
9 12]. Thus, the fact-specific context of the case was considered by the magistrate judge when the
10 determination was made that the Defendants were not entitled to qualified immunity. Taking the claim
11 on its face, Plaintiff's constitutional right to file grievances would have been violated if Defendants in
12 fact drafted and approved a false rules violation report against him in retaliation for filing the adminis-
13 trative group appeal. Furthermore, the alleged action taken by Defendants would have violated a clearly
14 established constitutional right to file grievances, because a reasonable officer could not have believed
15 their retaliatory conduct did not violate federal law.

16 Thus, under *Saucier's* two-prong test for determining whether the qualified immunity defense
17 applies, the magistrate judge appropriately determined that the defense is not appropriate in this case.
18 The record reveals that the magistrate judge considered the alleged facts in light most favorable to
19 Plaintiff. Further, in considering the allegations as if they were established, a potential violation of
20 Plaintiff's clearly established constitutional right to file grievances was established. Based upon the
21 foregoing, the Defendants' objection is OVERRULED and the Court ADOPTS the magistrate judge's
22 findings on this issue.

23 ***2. Whether Plaintiff Presented a Genuine Dispute of Material Fact on the Causation Element***
24 ***of the Retaliation Claims***

25 A viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a
26 state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected
27 conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the
28 action did not reasonably advance a legitimate correctional goal. *Rhodes v. Robinson*, 408 F.3d 559,

567-568 (9th Cir. 2005). To raise a genuine dispute of material fact as to retaliatory motive, the plaintiff must produce, “in addition to evidence that the defendant knew of the protected speech, at least (1) evidence of proximity in time between the protected speech and the allegedly retaliatory decision, (2) evidence that the defendant expressed opposition to the speech or (3) evidence that the defendant’s proffered reason for the adverse action was false or pretextual.” *Pinard v. Clatskanie School Dist.* 6J, 467 F.3d 755, 771 n.21 (9th Cir. 2006).

The magistrate judge found that Plaintiff failed to provide any corroborating evidence to support his declaration that Defendants knew of the July 2007 group appeal before the September 11, 2007 incident. [Doc. No. 95, at 9-10.] Plaintiff argues that a legitimate inference can be drawn from the conduct of T. Ochoa, M. Ormand and D. Edwards that would have alerted Defendants, directly or indirectly, of Plaintiff’s July 2007 group appeal. [Doc. No. 101, at 3-4.] Specifically, Plaintiff lists four instances as evidence that Defendants would have been alerted to the existence of the group appeal: (1) an investigation of the allegations in the group appeal would have required Defendants to be contacted and interviewed; (2) Chief Deputy Warden T. Ochoa directed the appeals coordinator to screen out Plaintiff’s complaints concerning Defendants; (3) appeals coordinator, M. Ormand, provided Defendants with a perjured declaration; and (4) appeals coordinator, D. Edwards, retaliated against Plaintiff for filing a complaint against the staff. [Doc. No. 86, at 16-17.]

The Court adopts the R&R’s finding that Plaintiff failed to provide any corroborating evidence to support that Defendants were alerted of the group appeal in any of the four aforementioned instances. [Doc. No. 95, at 9-10.] Plaintiff relies on *Espinal v. Goord*, 558 F.3d 119 (2nd Cir. 2009) to show a legitimate inference that Defendants were aware of the July 2007 appeal. [Doc. No. 101, at 3-4.] In *Espinal*, the plaintiff filed suit under 42 U.S.C. §1983 claiming, among other things, correctional officers used excessive force to retaliate against him for a prior lawsuit filed against the Department of Corrections and various officers. *Espinal*, 558 F.3d at 120-121. *Espinal*, however, differs in that a specific defendant in the second lawsuit was also a defendant in the first action. *Id.* at 130. The court in *Espinal* therefore found a legitimate inference could be made that the officer who was a defendant in both lawsuits could have made the defendant named only in the second action aware of the first. *Id.*

Here, Plaintiff's initial administrative group appeal did not mention or name either Defendant. [Doc. No. 85-4, at 50.] Instead, the alleged misconduct was against "Warden Scribner and his subordinates." *Id.* Unlike *Espinal*, no legitimate inference could be made that Defendants were aware of the previous action because neither of them were mentioned in the group appeal and there is no evidence that either was ever put on notice of any such action. *Id.* Plaintiff's statements that Defendants were made aware of the grievance through the investigation process lacks corroborating support. [Doc. No. 86, at 16.] There is no evidence to show that either Defendants needed to be contacted regarding the group misconduct appeal. Furthermore, the appeal decision made no mention of employee interviews and did not signal that either Defendant was involved in the investigation process. [Doc. No. 85-4, at 58.] Moreover, Plaintiff stated under oath that he had never spoken to any staff members, except Lieutenant Sigler, about the group appeal and that neither Defendant ever made a comment to him about it. *Id.* at 16. The magistrate judge also appropriately found that the incidents involving Ochoa, Ormand, and D. Edwards provide no evidence as to whether Defendants were alerted to the existence of the group appeal. [Doc. No. 95, at 9.] Plaintiff thus failed to provide any corroborating evidence to support his claim that Defendants knew of the July 2007 group appeal before the September 11, 2007 incident. Therefore, Plaintiff did not present a genuine dispute of material fact on the causation element of the retaliation claims and the Plaintiff's objection on this issue is **OVERRULED**.

3. Whether Plaintiff Presented a Genuine Dispute of Material Fact on the Legitimate Correctional Goal Element of the Retaliation Claims

"A successful retaliation claim requires a finding that 'the prison authorities retaliatory action did not advance legitimate goals of the correctional institution or was not tailored narrowly enough to achieve such goals.'" *Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995). "The plaintiff bears the burden of pleading and proving the absence of legitimate correctional goals for the conduct of which he complains." *Id.* The court "should 'afford appropriate deference and flexibility' to prison officials in the evaluation of proffered legitimate penological reasons for conduct alleged to be retaliatory." *Id.* at 807.

Plaintiff objects to the R&R's finding that Plaintiff failed to provide a genuine dispute of material fact in regards to the legitimate correctional goal element of the retaliation claim. [Doc. No.

1 95, at 11.] Plaintiff alleges that a legitimate correctional goal did not exist because (1) Defendants
2 falsified their reports; (2) the Crime/Incident Reports and the Rules Violation Reports contained
3 discrepancies as to where the weapon was found; (3) Plaintiff and cell mate were ultimately found not
4 guilty of possessing the weapon; and (4) even if Defendants found the weapon in front of his cell,
5 Plaintiff could not be held accountable for it because it was not under his control. [Doc. No. 101, at 5.]

6 Plaintiff argues that a legitimate correctional goal did not exist because Defendant Amat falsified
7 the Crime/Incident Report by reporting that the weapon was found in front of Plaintiff's cell as opposed
8 to the day room floor where Plaintiff alleges. [Doc. No. 101, at 5.] Plaintiff, however, fails to provide
9 any evidence to support where the weapon was found other than Plaintiff's own declaration. [Doc. No.
10 30, at 4; Doc. No. 101, at 5]. Plaintiff further argues that the discrepancies between the Crime/Incident
11 Reports and the Rules Violation Reports "bears upon the reliability of Defendant Catlett's incident
12 report." [Doc. No. 101, at 5.] Upon review of the record, the Court agrees with the magistrate judge's
13 finding that the reports do not contain an apparent discrepancy. [Doc. No. 95, at 11.] Both the
14 Crime/Incident Reports and the Rules Violation Report note that the weapon was found in front of
15 Plaintiff's cell. [Doc. No. 85-6, at 6, 18.] Plaintiff's assertion that the Rules Violation Report stated the
16 weapon was found "in the laundry that came out of" Plaintiff's cell whereas the Crime/Incident Report
17 noted it was found "while collecting laundry in front of " Plaintiff's cell does not support a finding of
18 any such discrepancy. [Doc. No. 101, at 5.] Plaintiff also argues a legitimate correctional goal did not
19 exist because both he and his cell mate were later exonerated for possession of the weapon. [Doc. No.
20 101, at 5.] This disciplinary hearing decision, however, was based on the fact that the weapon was
21 found in front of Plaintiff's cell, a common area, and there was no evidence to prove it was ever under
22 the exclusive control of either inmate. Notwithstanding evidence to prove the weapon belonged to
23 either cell mate, under the California Code of Regulations, Title 15 section 3312(a)(3), prison staff are
24 required to document discovery of inmate-manufactured weapons. Defendants therefore properly
25 reported the weapon allegedly found in the common area in front of Plaintiff's cell. For the foregoing
26 reasons, Plaintiff failed to provide evidence proving the absence of a correctional goal for Defendants'
27 conduct. Therefore, Plaintiff did not present a genuine dispute of material fact on the legitimate
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1 correctional goal element of the retaliation claims and the Plaintiff's objection on this issue is OVER-
2 RULED.

3 *Conclusion*

4 Pursuant to 28 U.S.C. § 636(b)(1)(C), the undersigned has conducted a de novo review of this
5 case. Having carefully reviewed the entire file, the Court finds Judge Lewis' Report and Recommenda-
6 tion to be supported by the record and based on a proper analysis and therefore OVERRULES the
7 objections filed by the parties, [Doc. Nos. 96 and 101], and ADOPTS the R&R, [Doc. No. 95], in its
8 entirety. Based thereon, Defendants' Motion For Summary Judgment, [Doc. No. 85], is GRANTED
9 terminating this case. The Court issues a certificate of appealability.

10 IT IS SO ORDERED.

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12 DATED: January 5, 2012

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14 Hon. Anthony J. Battaglia
15 U.S. District Judge
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